

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE CITY OF HUNTINGTON,

Plaintiff,

v.

CIVIL ACTION NO. 3-17-01362

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Hon. David A. Faber

Defendants.

CABELL COUNTY COMMISSION,

Plaintiff,

v.

CIVIL ACTION NO. 3-17-01665

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Hon. David A. Faber

Defendants.

**COMBINED MOTION BY STATE OF WEST VIRGINIA
FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT
OF PLAINTIFFS AND LEAVE TO EXCEED PAGE LIMIT**

The State of West Virginia respectfully seeks leave of the Court to file a brief as *amicus curiae* in support of Plaintiffs' Motion in Opposition to Defendants' Motion to Dismiss Or For Summary Judgment Based on *Res Judicata* And Release. A copy of the proposed brief is attached as Exhibit A. The State also seeks leave to file a brief more than ten pages in length.

The Fourth Circuit Rules of Appellate Procedure permit States to file *amicus curiae* briefs without consent of the parties or leave of the Court within seven days of the filing they support.

As the local rules do not provide additional guidance for *amicus curiae* briefs, counsel for the State conferred with chambers and the docketing clerk to confirm that the Court would accept the framework in the federal rules. Nevertheless, in an abundance of caution, the State files this motion requesting the Court to accept the proposed brief.

The State has a strong interest in ensuring that state and federal courts properly interpret West Virginia law. It also has an interest in the Court's interpretation of the relationship between local and state governments in West Virginia. Defendants' recent motions for summary judgment based on *res judicata*, and Plaintiffs' opposition in response, raise deep issues concerning the intersection of West Virginia and federal law, and the division of authority between state and local governments. Defendants overstate the degree to which state settlements control litigation by local governments, and do not adequately describe the law of claim preclusion in West Virginia.

In light of these concerns, the State of West Virginia enters this motion, and the attached brief, to help inform the Court both of the law regarding claim preclusion between States and their local governments, and the specific power of the West Virginia Attorney General under state law.

Additionally, as parties to the settlement agreements that form the crux of Defendants' motions, the State can provide a perspective to assist the Court unique from those in the parties' filings. If the Court grants oral argument on Defendants' motions, the State also respectfully requests leave to participate in that hearing.

The State also asks permission to file a brief more than ten pages in length. Under Fourth Circuit Rule of Appellate Procedure 29(a)(5), an *amicus curiae* brief may normally be "no more than one-half the maximum length authorized by these rules for a party's principal brief." Local Rule of Procedure for the Southern District of West Virginia 7.1(a)(2) states that the page limit for memoranda is no more than 20 pages. Read together, these rules imply that *amicus curiae* briefs

may be ordinarily limited to no more than ten pages in length. The gravity and number of the issues in this case—together with the fact that it supports Plaintiffs’ opposition to three separate motions—makes it infeasible to provide an adequate response in less than ten pages. Therefore, the State asks that the Court also permit the State to submit its proposed brief, which is nineteen pages long.

Respectfully submitted.

DATED: March 27, 2020

COUNSEL FOR
PATRICK J. MORRISEY,
in his official capacity as Attorney General for the State of West Virginia

PATRICK MORRISEY
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/s/ Lindsay S. See

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th date of March 2020, I electronically filed the foregoing BRIEF OF AMICUS CURIAE STATE OF WEST VIRGINIA SUPPORTING PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT: *RES JUDICATA* AND RELEASE OF CLAIMS with the Clerk of Court by using the CM/ECF System.

/s/ Lindsay S. See

Lindsay S. See (WV Bar No. 13360)

Solicitor General

Counsel of Record